

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	
COUNTY OF RICHLAND	)	STATE BOARD OF EDUCATION
	)	
In Re:	)	
	)	
Magnolia Academy Charter	)	FINAL ORDER
School Appeal	)	
_____	)	

This matter is before the State Board of Education as an appeal from the decision of the Charleston County Board of Education denying the Magnolia Academy Charter School application. A public hearing was held on April 8, 1998. Gerry Urbanic, Esquire appeared on behalf of the Charleston County Board of Education and Sherry Huston appeared on behalf of Magnolia Academy Charter School.

#### FACTS

At its December 1996 board meeting the Charleston County School Board (Local Board) approved a policy that required charter school applications to be submitted between July 1 and November 1 for approval for the next scholastic year.

By letter dated November 1, 1997, the Magnolia Academy Charter School, by its executive director Sherry Huston, asked for an extension of the filing deadline. In that letter, Ms. Huston stated "If you are willing to consider our request or wish to discuss this, please contact Sherry Huston at [telephone number]." The Local Board did not contact Ms. Huston or otherwise respond to this request.

Ms. Huston filed a charter school application on December 5, 1997. Virginia Everman from the school district reviewed Magnolia's application. On December 19, 1997, Ms. Everman responded to Ms. Huston by letter. She also attached a three-page document entitled "Charter School Application—Magnolia Academy Concerns." That document alleged numerous deficiencies in the application.

A hearing was held on January 8, 1998 before the Local Board which voted to deny the charter school application for the following concerns: 1) application received after deadline; 2) staff allocations; 3) student evaluation; 4) parental rights; 5) academic standards; 6) issuance of high school diplomas; 7) location of school; 8) teacher certification; and 8) distance learning done at home 4 days a week. These reasons were included in the Local Board's minutes dated February 9, 1998.

By letter dated February 23, 1998, Magnolia Academy notified the Local Board that it would submit a revised application by March 13 and requested another hearing on the revised application. The Local Board responded on March 3, 1998, stating that a hearing would not be scheduled since the original application was not timely. Ms. Huston was encouraged to resubmit the application after the July 1 deadline.

Magnolia Academy filed a notice of intent to appeal with the State Board of Education on March 16, 1998. The issues on appeal are whether the Local Board waived its deadline by considering the application and having a public hearing and, in the alternative, whether the Local Board's failure to waive the deadline was arbitrary.

#### **Analysis**

Pursuant to S.C. Code Section 59-40-70 (A) "[t]he local school board may establish a schedule for receiving applications from charter schools and shall make a copy

of any schedule available to all interested parties upon request. . . ." It is undisputed that the Local Board had an existing policy which required charter school applications to be submitted between July 1 and November 1. The deadline was clearly stated in the "*Schedule for Charleston County School District Charter School Applications.*" It is also undisputed that Ms. Huston of the Magnolia Academy knew of the application deadline as she requested an extension in her letter of November 1, 1997.

The question here is whether the Local Board waived its policy by reviewing the application and having a hearing on the matter or, in the alternative, if the Local Board's failure to waive the deadline was arbitrary.

A. Did the Local Board Waive Its Policy Regarding Filing Deadlines?

The South Carolina Supreme Court has held that waivers will not be lightly inferred. (See, Charleston County School District v. State Budget and Control Board, 313 S.C. 1, 437 S.E.2d 6 (1993) (Budget and Control Board did not waive a statutory-mandated appraisal provision by entering into an alternative appraisal provision and later demanding that the statutory appraisal be done.)). Magnolia Academy argues that the Local Board waived the deadline by receiving and reviewing the application. In a recent case the South Carolina Supreme Court ruled that a school district was not equitably estopped from raising the statute of limitations defense simply because it had entered into settlement negotiations with the plaintiff. The Court in that case recognized that "Under South Carolina law, a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct." Black v. Lexington School District No. 2, 327 S.C. 55, 488 S.E.2d 327 (1997). However, the Court found that the evidence that statements

were made that the school district was interested in settling the case did not rise to the level of estoppel. Here, the Local Board received the request for the extension on the deadline for filing the application. Magnolia Academy can show no reliance on the Local Board's actions that would have prejudiced its position. Had the Local Board immediately notified Magnolia Academy that the application would not be accepted, Magnolia Academy would be in no better or worse position than it is now. Therefore, Magnolia Academy can show no prejudice by the delay until February 9, 1998, that it had actual notice that its application was denied.

Even assuming *arguendo* that the District staff's actions in reviewing the application appeared to waive the timeline issue, which is not the position of the State Board, there was no evidence presented that the district staff had the authority to waive the Board rule's without action of the Board. In addition, it would be inconsistent with the reading of the Charter School Law to hold that the review of an application by staff could be construed as a waiver of a local board policy. The act states that "If the local school board finds the charter school application is incomplete or fails to meet the spirit and intent of this chapter, it immediately shall request the necessary information from the charter applicant." S.C. Code 59-46-70 (A). Ms. Everman was acting within the spirit of the law when she reviewed the application and her consideration of the application in no way implies a waiver by the Local Board.

**B. Was the Failure to Waive the Deadline Arbitrary?**

Magnolia Academy argues that the Local Board acted in an arbitrary manner when it failed to waive the deadline for filing application. "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and

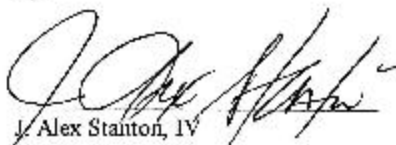
exercise of judgment, is made at pleasure, without adequate determining principles, or is govern by no *fixed rules or standards*." Deese v. South Carolina State Board of Dentistry, 286 S.C. 182, 332 S.E.2d 539 (Ct.App. 1985) (Emphasis in original). The deadline was set forth in the published *Schedule for Charleston County School District Charter School Applications*. Ms. Urbanic stated at the hearing before the State Board that the application schedule was created to allow adequate time to budget for approved charter schools.

Therefore, the State Board finds that the Local Board did not act in an arbitrary manner when it applied its *Schedule for Charleston County School District Charter School Applications* to Magnolia Academy.

#### CONCLUSION

The Local Board's decision to deny Magnolia Academy's application because it was filed after the Local Board's express deadline for filing applications is upheld.

South Carolina State Board of Education  
By:



J. Alex Stanton, IV  
Chair

Columbia, South Carolina  
April 28, 1998